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In the Supreme Court of the United States

October Term, 1970

No. 1170

ADAM FARKAS,
PETITIONER,

v.

TEXAS INSTRUMENTS, INC.,
RESPONDENT.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT

ADAM FARKAS
Pro Se
82 State Street
Bristol, Rhode Island

Statler Press, Inc., Boston, Mass. — LI 2-7272

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Opinions Below

On December 31, 1968 the U.S. District Court of Massachusetts dismissed this case as: "HAVING NO REGARD WHATSOEVER TO THE GRATUITOUS UNPROVED CHARGES ON ANY PAPER FILED BY THE PLAINTIFF, etc." (see Appendix A)

On January 2, 1969 the U.S. District Court of Massachusetts vacated its Judgment shown in Appendix 'A'. No opinion given.

On December 31, 1969 the U.S. District Court of Massa-

chusetts dismissed all complaints against Texas Instruments Inc., by ruling that it does not have the power to summon the defendant Texas Instruments, Inc., into the Court. (see Appendix B)

On January 20, 1970 the U.S. District Court of Massachusetts dismissed the case against the defendant Ling-Temco-Vought, Inc., by refusing permission to the Plaintiff to file any complaint against the Ling-Temco-Vought Corporation. (see Appendix 'C')

On July 10, 1970 the U.S. Court of Appeals for the First Circuit affirmed the District Court's Judgment in favor of the defendant, Texas Instruments, Inc. on the basis that the Texas Instruments, Inc., a Delaware Corporation was not doing any business in Massachusetts. (Appendix 'D')

However, the U.S. Court of Appeals for the First Circuit returned the case against the defendant Ling-Temco-Vought to the District Court by saying that a complaint should be permitted against the Ling-Temco-Vought Corporation. The defendant, Ling-Temco-Vought, Inc., openly told to the lower Court that it does exist and it does business in the State of Massachusetts. (Appendix 'D')

On July 27, 1970 the U.S. Court of Appeals denied Plaintiff's request for a Rehearing. No opinion given.

On October 16, 1970 the United States Supreme Court granted extension of time until December 28, 1970 for filing this Petition.

Jurisdiction

Jurisdiction of the United States Supreme Court is invoked pursuant to Title 28 U.S.C. Sec. 1254.

Constitutional Provisions and Statutes Invoked

The 14th Amendment of the Constitution of the United States of America, also Federal Statutes in Title 28, Sec.

1331 and Title 42 U.S.C. 1983 and 1985 and Section 1391(c) of Title 28 in the United States Code and Massachusetts General Laws Par. 223 Sec. 38.

Questions Presented

1. The complaint in this case alleges that the defendant Texas Instruments, Inc. blacklisted me — the petitioner here — and in concerted actions with State Officers of the Dallas Police Department enforced a Police Harassment program to prevent me from obtaining work for a living.

Since the case stands summarily disposed by the lower Courts I respectfully ask the Supreme Court of the United States whether or not my damages arising from the aforesaid violations of the U.S. Constitution should be forever dismissed just because of so called "difficulties" with service of process upon the defendant Texas Instruments Inc. under Massachusetts state law?

2. The Federal Law on Venue [Title 28, U.S.C. Sec. 1391(c)] requires that a "Corporation may be sued in any judicial district in which it is doing business". Also under Massachusetts General Laws, paragraph 223 Sec. 38 A Foreign Corporation (such as Texas Instruments, a Delaware Corporation) may be sued in Massachusetts if it has much as one agent in the State on a temporary or permanent basis with or without a usual place of business.

Therefore, I respectfully ask the Supreme Court of the United States whether or not the nine (9) salesmen and six (6) secretaries permanently employed by the defendant Texas Instruments, Inc. (Delaware Corporation) in Waltham, Massachusetts constitute enough "doing of business" to allow a lawsuit against Texas Instruments in Massachusetts?

Statement of the Case

About a year after I —Adam Farkas, the Petitioner here — became a U.S. Citizen I accepted an employment offer for work in electronics at the Texas Instruments Corporation. During my first 7 months of employment I received two merit pay raises for my professional achievements and subsequently I was transferred to another department in the Corporation.

In the new department a squeeze play was going on among the existing personnel and my supervisor advised me that he would not tolerate anyone with undesirable "Old Country" behavior such as mine. The Supervisor also introduced my national origin into several unfounded vile personal accusations as he threatened to throw me out of work.

I wrote about the treatment to the Vice-President of the Company, who is also the manager of the Division where the incident occurred. The Company's Vice-President simply ignored my letter.

Then, I submitted a written report on the matter to the President of Texas Instruments, to whom I expressed appreciation for my naturalized U.S. citizenship and its inherent values which are derived from the Constitution of the United States. In his written reply the President of Texas Instruments Incorporated advised me that:

1) he cannot influence his supervisors in the treatment of persons of foreign background,
2) the Constitution of the United States does not apply to persons in my circumstances.

Four days after the aforesaid written exchanges I was thrown out of work and to top it off I was fired with some of the most vicious statements ever recorded on a former

employee of Texas Instruments, Inc. Among other things the personnel records show that I am a "troublemaker" and "completely unproductive" person. This information was also widely circulated among other employers and at the State Employment Commission where I sought help in order to secure work for a living.

In addition to the foregoing, the officers of Texas Instruments, Inc., got together with the Police Chief of Dallas, Texas and concocted a set of ugly and unfounded charges which then became the basis for placing me and my family under extended harassment by the officers of the Dallas Police Department. For reasons which are utterly vindictive, the Police listed me as a dangerous person whose presence in town was a threat to the safety of prominent citizens including the visiting Mrs. Lady Bird Johnson, wife of the President of the United States.

The Police harassment against me was set up not only for my personal intimidation but also in order to prevent me from providing a livelihood for my family. Needless to say that the Police harassment was very effective in preventing me from obtaining work. Few employers if any would put up with persons having such Police records and subject to continuous Police harassment.

Thus, I became permanently unemployed which condition resulted in the loss of my home, car and other personal belongings. The worst effect, however, was upon my family who had to endure the consequences of such treatment. My wife developed a nervous disorder which handicapped her in obtaining work for herself and my small child of three years of age could not work to provide for her own survival. After about 18 months of unemployment we became dependent upon assistance from overseas in order to survive in the United States of America.

Under these circumstances I sought the protection of the law, hoping that specific guarantees given in the Federal

Laws and the Constitution of the United States can help to clear up the unfounded charges and Police harassment against me. Unfortunately, I was not able to secure the services of any attorney for a very long time. For most practicing lawyers I was a poor prospect for a client. I do not have the required $50.00 per hour fee. So, several lawyers told me that in the United States justice is "impractical" for persons who have no money to pay for it.

Since the questions of law in my case are addressed to the basic concept of the American principle I also sought the help of those organizations whose interest in my problem would coincide with their advertized efforts toward the furtherance of great human causes.

The public defenders of the American Civil Liberties Union simply refused to help me. By this time the late Martin Luther King, Jr., filled up the jails with black Americans in search for some justice. So, the lawyers of the American Civil Liberties Union did not indicate any confidence in the project of securing any human right in America by rational methods.

On the other side of the picture, the organizations which advocate the feasibility of maintaining traditional American values admitted the difficulty with the cases where financially poor persons in the United States seek redress against wealthy individuals or Corporations. Thus, in spite of every devotion to the traditional American ways and values that lawyers of such organization openly admitted defeat of the traditional process. I do not need any lawyer, Court or Government to achieve redress against a person of my own size. The real value of the legal process is in the cases where redress is achieved between unequal parties engaged in the controversy.

In theory — at least— I have two methods of redress. As a government contractor, Texas Instruments, Inc., blacklisted me because I am a naturalized-immigrant citizen

of the United States. Therefore one method of redress in my case would be under *the non-discrimination provisions* of various Executive Orders signed by the President of the United States. Unfortunately such redress is only a figment of the mind. This is correctly pointed out in a decision rendered by the Honorable U.S. Chief Judge Tuttle of the 5th Circuit Court of Appeals, who wrote in 967.

> "The history of the executive orders on the subject from 1951 to the present all point to the conclusion that the enforcement of the nondiscrimination provisions in Government contracts has been entrusted to one or more of the Government agencies with the assistance of a committee appointed by the President .... (Chief U.S. Judge Tuttle continues) As far as we have been able to ascertain, the Department of Justice has not instituted any proceeding in any court against noncomplying contractor to enforce the nondiscrimination provisions of a Government contract". *Farkas* v. *Texas Instruments, Inc.*, 375 F.2d 629, 632 ftn. 2.

One should reasonably conclude that where the government agencies entrusted with the enforcement of a law simply do not bring action against the violators such law becomes a useless item. Therefore I chose to seek redress under the Laws and Constitution of the United States.

I wrote the complaint, and filed it in the U.S. District Court of Massachusetts. My original Complaint in the U.S. District Court alleges offenses in violation of the 14th Amendment of the Constitution of the United States and offenses in violation of Federal Statutes in Title 42 Sec. 1985 and 1983 of the United States Code.

I brought this suit in Massachusetts for the following three reasons:

1. Under the Federal Statute in Title 28 Sec. 1391(c) a corporation may be sued in any judicial district in which it is doing business.
2. It so happens that the defendant Texas Instruments, Inc. (Delaware Corporation) has nine (9) permanent salesmen and six (6) permanent secretaries employed year around in a large sales Headquarters located in Waltham Massachusetts.
3. Also the Defendant Texas Instruments, Inc., (Delaware Corporation has vast holding of property and manufacturing facilities of about ONE BILLION DOLLAR business volume located in Attleboro, Massachusetts.

My original complaint in the U.S. District Court of Massachusetts alleges the aforesaid blacklisting and conspiracy of Texas Instruments officers with State Police Officers in order to prevent me from obtaining work for a living.

Proceedings in the U.S. District Court of Massachusetts

The following are matters of record in the proceedings conducted by U.S. District Judge Frank Murray:

1. First Judge Murray struck my original complaint and advised me about the right to submit an Amended Complaint to his Court.

2. On two different occasions I submitted Amended Complaints to the U.S. District Court. The Court denied me permission to file any complaint on two occasions. When I requested the reason for the denial my request was simply ignored by the Court.

3. During the subsequent two years I submitted several requests and Motions to the District Court. With only one exception all of my motions and requests have been denied by U.S. District Judge Frank Murray. On one occasion Judge Murray struck my motion wherein I requested the Court to appoint a lawyer for me under the applicable Federal Law.

4. On December 31, 1968 all of my complaints were dismissed as Judge Murray wrote the decision stating that "The Court will have no consideration whatsoever for the unproved and gratuitous charges appearing on any paper which Plaintiff submitted to the Court." (see Appendix A)

So, the merits of my complaints have been adjudicated without having any complaint on file and before the controversy was admitted for jurisdiction under the law. This was, of course, one of those free-wheeling and heavy handed abuses of the judiciary power. (The U.S. District Court adjudicated the merits of my claim before taking jurisdiction over the controversy.)

5. On January 2nd 1970 the aforesaid "Judgment" was vacated.

6. Finally in January of 1970 I found an attorney to represent me and he was permitted to file a complaint in my behalf. The sum and substance of the complaints submitted by my attorney was not any different from the complaints which I submitted to the District Court on three different occasions.

7. It turned out however that the actual offenses

against the United States Constitution, (violation for enforcing a State Police harassment program etc.) were of no importance throughout the proceedings. Judge Murray raised "major legal questions" on the service of process upon the defendant Texas Instruments, Inc., under Massachusetts State law. For one *whole year* "grave doubts" on the subject of service of process took over the proceedings in the U.S. District Court and it did not matter as to how many times the U.S. Constitution was actually violated by the State Police acting in concert with Corporate officers of the defendant Texas Instruments, Inc.

8. Finally on December 31, 1969 the U.S. District Court handed down the decision dismissing all complaints against the defendant Texas Instruments. In the District Court's Judgment are word for word quotations from the sworn statements of the chief Corporate lawyer of the defendant, Texas Instruments, Inc., who swore, of course, that his Company does no business in Massachusetts.

It is interesting to note that while Bryan F. Smith, the Chief Corporate lawyer of the defendant, Texas Instruments, Inc., personally swore in the U.S. District Court that his Company does not do business in Massachusetts the Commerce Department in the State of Massachusetts published a nation wide advertising campaign showing that the Texas Instruments (Delaware Corporation) came from Texas to Massachusetts and does excellent business in Attleboro, Mass. Appendix H. Thus, encouraging other businesses around the nation to do the same as Texas Instruments, Inc., is doing. The contradiction in the published

evidence did not bother Judge Murray in the least. (See Appendix H)

For the epitome of all absurdity, U.S. District Judge Frank Murray also decided that the nine salesmen and six secretaries of Texas Instruments (Delaware Corporation) in Massachusetts do not take any orders. (see Appendix B) Would Texas Instruments, Inc., (Delaware Corporation) spend over ONE HALF MILLION DOLLARS A YEAR to keep nine salesmen and six Secretaries in Massachusetts if such salesmen were not taking any orders for the the manufacturer whose product they are selling? So, U.S. District Judge Frank Murray took three years (give or take a couple of months) to determine that his Court has "no power" to serve papers on the defendant, Texas Instruments, Inc. ("Lack of Service of Process")

Proceedings in the U.S. Court of Appeals For the First Circuit

I appealed to the U.S. Court of Appeals for the First Circuit for a review of the District Court's Judgment. Upon submission of my brief to the Court of Appeals I received instructions requesting that I should present written arguments on my case in the light of a recent decision which the Court of Appeals rendered in the case of *Seymour* v. *Parke, Davis, Inc.* a copy of which was enclosed with the instructions which were mailed to me. In *Seymour* v. *Parke, Davis, Inc.*, the U.S. Court of Appeals decided that even though Massachusetts General Law 223 Sec. 38 does permit "service of process" upon a foreign corporation which "is engaged in solliciting business in Massachusetts" "fairness will not permit Massachusetts to Assume jurisdiction".

In other words the U.S. Court of Appeals decided that the law requiring 'service of papers' on the defendant

should be set aside for the sake of "fairness". (See the final sentence in the decision rendered in *Seymour v. Parke, Davis, Inc.*, and the applicable Massachusetts Law 223 Sec. 38 attached here)

On the other hand in the same decision the U.S. Court of Appeals also states that if the federal Court is located in a district where a community exists "into whose business life the defendant significantly entered" on a substantial, continuous basis then a lawsuit against the defendant is permissible in such District Court. Thus, all I had to show was that the Texas Instruments, Inc. (Delaware Corporation) did in fact significantly enter into the business life of a Massachusetts Community, from May 1967 to December 31, 1969.* It so happens that *this is the case in Attleboro, Massachusetts.* Accordingly I submitted to the Court of Appeals about $15,000.00 worth of corporate advertisements which appeared in the Attleboro, Mass. daily newspaper and show that in the year 1969 Texas Instruments Inc., is the owner and manager of the largest industry in Attleboro, Mass. Officially projected business of several hundred million dollars. (Appendix H.) Also according to Attleboro's daily newspaper the defendant, Texas Instruments Inc. is managing everything in town from little league baseball, to religious worshipping and community recreation facilities.

Moreover, the Commerce Department of Massachusetts was proudly advertising in the Newsweek Magazine that the Texas Instruments, Inc. (Delaware Corporation) came to Massachusetts and it is successfully doing business in the State. (Appendix H)

Since there was no other Texas Instruments Inc., operating in Attleboro Massachusetts from 1967 to 1970 there could be no doubt that all of these public anouncements and advertisements refer to the activities of the Delaware Cor-

* The time interval of the lower court proceedings presented on appeal.

poration which came into Massachusetts just as the Massachusetts Department of Commerce describes it. (Newsweek magazine, Dec. 18, 1967).

Confronted with such publications the Honorable chief U.S. Judge Aldrich of the Court of Appeals held a Hearing and demanded that I submit to him registration papers from the Massachusetts Secretary of State so as to show that Texas Instruments Inc., was properly registered to do business in Attleboro, Massachusetts. Upon Searching the State records it turned out that there was no registration for Texas Instruments, Inc. in Attleboro, Mass. and the only registration under such name was found in Boston Massachusetts where a dummy Corporation was registered to do business with *total capital assets of Three Dollars.* Clearly this was not the Texas Instruments Inc., which is employing approximately 5000 workers at a One million square feet manufacturing facility in Attleboro, Mass. (It is doubtful that a business with only THREE DOLLARS Total Assets could expect one Billion Dollars of business. (See page 15 *infra*)

When this evidence was submitted to the Court of Appeals the Honorable U.S. Chief Judge Aldrich threw out the papers and informed me that he will no longer accept any paper which I may offer in evidence, to the Court. Moreover, Chief Judge Aldrich also instructed the defendant's attorney to file some papers in Court. So, the defendant filed a Certificate from the Massachusetts Secretary of State attesting to the so called "fact" that a Corporation just changed and as of January 1970 decided to call itself Texas Instruments, Inc., its name in Attleboro, Mass. (page 20, *infra*)

THIS CERTIFICATE BECAME THE PROOF OF THE PUDDING AND THE BASIS FOR THE JUDGMENT.

So, for the purposes of Judgment the U.S. Court of Ap-

peals conveniently forgot to mention the dates of the events attested by the "certificate".

Therefore, I attach here the following two pieces of evidence thrown out by U.S. Chief Judge Aldrich:

1. The registration of the (dummy) Texas Instruments, Inc., - Massachusetts Corporation which has a grand total of $3 (Three Dollars) assets declared in the fiscal year 1968.

2. The published business of the Texas Instruments, Inc., - Delaware Corporation which operates in Attleboro Massachusetts and whose employees donated over $65,000 (Sixty Five Thousand Dollars) to the United Fund during the fiscal year 1968.

The U.S. Court of Appeals is fully aware that the Texas Instruments Massachusetts Corporation could not donate $65,900.00 out of its employee payroll when the Corporation has only $3 of assets.



The Commonwealth of Massachusetts

JOHN F. X. DAVOREN

Secretary of the Commonwealth

STATE HOUSE BOSTON, MASS.

MASSACHUSETTS CORPORATION FILING FEE $25

We, F. Douglas Cochrane, President, Richard W. Southgate, Treasurer and F. Douglas Cochrane, Richard W. Southgate and John A. Pike

being a majority of the directors of the corporation named below, in compliance with General Laws, Chapter 156B, hereby certify that:

1. The name of the corporation is Texas Instruments Inc.

   Kind of business Manufacturing Federal Identification No. _____

2. The location of its principal office in Massachusetts is 225 (NUMBER) Franklin (STREET) Street, Boston (CITY OR TOWN)

   and outside Massachusetts None (NUMBER) (STREET) (CITY OR TOWN) (STATE)

3. Date of annual meeting None was held 4. End of Fiscal Year 12/31/68

5. The capital stock of each class authorized and issued on the date fixed in the by-laws of the corporation for its annual meeting was as follows:

CLASS OF STOCK	PAR VALUE PER SHARE If no par, so state	TOTAL AUTHORIZED By Articles of Organization or Amendments		TOTAL ISSUED AND OUTSTANDING Including any issued stock held as Treasury Stock	
		Number of Shares	Total Par Value	Number of Shares	Amount Then Paid Thereon
PREFERRED . .		0	$		$
COMMON . . .	$1	150,000	$150,000	3	$3.00

The statement of the assets and liabilities of the corporation as of said date is as follows:

ASSETS			LIABILITIES		
Cash	$ 3	00	Accounts payable	$	
Accounts receivable, customers			Notes and acceptances payable		
Accounts receivable, others. .					
Notes receivable, customers. .					
Notes receivable, others . . .			Mortgages (Specify kind of property mortgaged)		
Merchandise					
Supplies					
			Bonds		
Securities (except those issued by this corporation)			Reserves (classify below): Note: Reserves for depreciation or reduction of assets, if not deducted from assets, shall be appropriately described to identify the assets to which they apply.		
Real Estate					
Machinery					
Motor Vehicles and Trailers . .					
Equipment and Tools. . . .					
Furniture and Fixtures . . .					
Prepaid insurance, interest, taxes, .					
Patent rights, trade-marks, copyrights			Capital stock with par value	3	00
Goodwill			Capital stock without par value		
Treasury stock			Number of shares without par value _____		
			Surplus		
Profit and loss (deficit) . . .					
Total	$ 3	00	Total	$ 3	00

APR 30'69 18,414

...rm of office of each expires, are as follows:—

OFFICE	NAME	DOMICILE City or Town, Number, Street	Expiration of Term of Office
President	F. Douglas Cochrane	Green Street Milton, Mass.	Until the next annual meeting and until their successors are elected and qualified
Treasurer	Richard W. Southgate	University Lane Manchester, Mass.	
Clerk	F. Douglas Cochrane	See above	
Directors	F. Douglas Cochrane	See above	
	Richard W. Southgate	See above	
	John A. Pike	Conant Road Lincoln, Mass.	

IN WITNESS WHEREOF AND UNDER THE PENALTIES OF PERJURY we hereunto sign our names

this 2nd day of March, 1969

INSERT DATE OF SIGNING

President, Treasurer, and majority of Directors sign in space below. Write first name in full.

F. Douglas Cochrane, President. Richard W. Southgate, Treasurer

MAJORITY OF DIRECTORS

F. Douglas Cochrane

Richard W. Southgate

GENERAL LAWS, CHAPTER 156B

SECTION 111. Such report of a corporation which has issued an outstanding capital stock of two hundred thousand dollars or more, for this purpose counting shares without par value as of a par value of one hundred dollars each, shall be accompanied by a written statement on oath by an auditor which shall be attached to and form a part of such report.

WE, the officers who signed the foregoing report of condition of _____

hereby certify that _____ who executes the following statement, was duly selected as auditor of said corporation as provided in General Laws Chapter 156B, Section 111.

_____, 19____ _____, President

_____, Treasurer

AUDITOR'S STATEMENT

I have examined the statement of assets and liabilities included in this report in accordance with generally accepted auditing standards and in my opinion said statement of assets and liabilities presents fairly the financial position of the corporation as of the date thereof in conformity with generally accepted accounting principles.

?0, Still
'se Doors

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... learned to drive a ... Mrs. Keele. ... said was a Baptist ... she did part-time jobs ... to need. They reared ... and their offspring ... the fourth genera-

... straight at age 90, ... lives alone in a five- ... asking fee and re- ... help in keeping it up. ... love are for Mrs. ... Sundays are

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... Journals
...21)
... or send ... to
ELECTRONIC
... ALLOYS, INC.
... Industrial Park
... Mass.

... Progressive and ... benefits includ-

... place
INC.
ION



Heading the TI United Fund drive are, left to right: Eric Maslen, Norman Jourdenais, John Harkness, Edward "Lou" Schulze, chairman, Russell Fowler, Robert Corson and Bradford Snow.

TI Breaks UF Record With $65,900

Employees of Texas Instruments Inc. in Attleboro broke their all-time United Fund Record, raising $54,700 achieving 174 per cent of its goal of $31,000. The total topped a previous high of $50,100 in 1966.

According to Edward L. Schulze, over-all chairman of the TI-UF Campaign, "the results reflect the concern of all 4,600 Tiers. Once again, more people than ever before have given of their time." Over 320 Tiers compared with 310 last year volunteered to do the campaign planning, soliciting, and the record keeping associated with a large drive.

This year's theme, "You are the Key," was the work of William Eliason, campaign publicity head, who is the merchandising manager of TI's Metallurgical Materials Division.

In addition to the employes contribution, TI donated $11,200, 28 per cent of the community bringing its total to $65,900, or drive.

Hebronville Woman Reports Sighting UFO

A Hebronville woman, who said she didn't believe what she saw until she took a drink of water to make certain she wasn't dreaming, declared to Attleboro police Saturday that she had seen a UFO — (unidentified flying object) early Friday morning hovering almost over her home.

being gold colored, or the object was. Believing it was a continuation of a bad dream she went to the kitchen and got a drink of water, emphasis on "water", she added. She went back and looked out again. There was the same object hovering over a willow tree in the Phillips St. back yard

Severe Flooding

Death Toll Tops 100 In Italy

ROME (AP) — Rescue teams battled mud and floods today to search for survivors of weekend floods and landslides that cut a path of death and destruction along the southern edge of the Italian Alps.

More than 100 dead were counted and officials feared the final toll may go much higher, exceeding the 113 who died in the floods in Florence and Venice two years ago today. That was the worst flood in modern Italian history.

The prefecture at Vercelli, at the apex of a tragic triangle formed by three overflowing where 64 persons were smothered in the rubble of their homes. The section is a wool producing region.

Dozens of factories, farm buildings, houses and cars were lost in the landslides which rain storm sent rumbling down north of Turin.

Venice had its fourth highest water in 40 years. The lagoon waters surged over the banks of the canals and sent inhabitants into their boats and boats.

The seas pounded both Italian coasts, doing damage all along the shores and tearing boats from their moorings.

Vote Bliss ... Youthful ... Vote ... Spatcher ... Vote Spatcher ... Experience ... Vote B Time ... Vote Bliss ... Insurance Brok Spatcher ... Teacher ... North Attleboro R Bliss ... Spatcher ... Attleboro Resident ... Former City Councilman ... Bliss ... Six Y lator ... Bliss ... Ranking Republican on Local Affairs Committee ... Spatcher ... K of Powerful House Ways & Means Committ ... 100% 6-Year Attendance Record ... S 96% 14 Years Attendance Record ville ... Vote Bliss & Spatch Years' Experie Spatcher Bliss A L cated ... Team ... ... Alwa 2 Votes f Attleboro ... Key Le Spatcher . Knows His Such As Bli Investigate Spatcher ... For All Local Attleboro's P Bliss ... Vote Need a Prover & Bliss ... The Funds ... For A ... Swimming Pool ... Th Secure County Funds for Enlarging 4th Dis ... Vote Bliss & Spatcher ... 20 Years' Exp Both on Key Committees ... Spatcher a T Always Available to Voters ... Bliss a Busin Vote for them Both ... Spatcher ... An Attl dent ... Bliss ... A Proven Legislative Team Investigate Thompson Explosion ... Spatch ttleboro Public Health Service Career ... Vo

RE-ELECT
Donald T. Bliss
AND
George I. Spatcher
YOUR STATE REPRESENTATIVES
Please Use Both of Your Votes
on TUES., NOV. 5, 196



Heading the TI United Fund drive are, left to right: Eric Mosley, Norman Jourdenais, John Markness, Edward "Lou" Schulze, chairman, Russell Fowler, Robert Corson and Bradford Snow.

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Venice had its fourth highest water in 40 years. The lagoon waters surged over the banks of the canals and sent inhabitants into their boats and boats.

The seas pounded both Italian coasts, doing damage all along the shores and tearing boats from their moorings.

Vote Bliss . . . Youthful . . . Vote . . . Spatcher . . . Maturity . . . Vote Spatcher . . . Experience . . . Vote Bliss . . . Full Time . . . Vote Bliss . . . Insurance Broker . . . Vote Spatcher . . . Teacher . . . North Attleboro Resident . . . Bliss . . . Spatcher . . . Attleboro Resident . . . Spatcher . . . Former City Councilman . . . Bliss . . . Six Years Legislator . . . Bliss . . . Ranking Republican on Legislative Local Affairs Committee . . . Spatcher . . . Key Member of Powerful House Ways & Means Committee . . . Bliss . . . 100% 6-Year Attendance Record . . . Spatcher . . . 96% 14 Years Attendance Record . . . Saved Pondville . . . Vote Bliss & Spatcher . . . 20 Years' Experience . . . Bliss A Legislator . . . Dedicated . . . Qualified Team . . . Always . . . Bliss . . . Use Your 2 Votes for the Attleboros . . . Fireman . . . Key Leader . . . Vote Spatcher . . . Knows His Needs Men Such As Bliss . . . Helped Investigate Thompson Explosion . . . Spatcher . . . For All Local Works Attleboro's Progress . . . Vote Bliss . . . Vote Need a Proven Legislator . . . Vote Spatcher & Bliss . . . The Team Working on State Funds . . . For A Swimming Pool . . . They Hope to Secure County Funds for Enlarging 4th District Court . . . Vote Bliss & Spatcher . . . 20 Years' Experience . . . Both on Key Committees . . . Spatcher a Teacher . . . Always Available to Voters . . . Bliss a Businessman . . . Vote for them Both . . . Spatcher . . . An Attleboro Resident . . . Bliss . . . A Proven Legislative Team . . . Helped Investigate Thompson Explosion . . . Spatcher . . . Attleboro Public Health Service Career . . . Vote Bliss

RE-ELECT
Donald T. Bliss
AND
George I. Spatcher
YOUR STATE REPRESENTATIVES
Please Use Both of Your Votes
on TUES., NOV. 5, 1968

Call 222-7590 or apply to:

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tory. We will train you. Call 222-2077 for confidential interview.

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Monday thru Friday 7 a.m. to 12 noon or 1 to 5 p.m.

All active and inactive Nurses in the Hospital's Service area
Are cordially invited to a
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Given by the Hospital Aid Association
RICE-WEBB AUDITORIUM
Thursday, November 7th, 2:30-4:00 P.M.

Want a better job? We've made it easy for you.

EVENING INTERVIEWS

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Wednesday, Thursday, & Friday

Our Employment Office will be open till 9:00 P.M. Wednesday, Thursday and Friday of this week. As one of the most progressive employers in this area we are growing rapidly and need both men and women to join us in good paying positions. Check our benefits outlined below. How do your current benefits compare?

Company Paid Profit Sharing, Retirement, Vacation Benefits (3 weeks after 5 years), Educational Assistance, Good Working Conditions, Car Pool Assistance, 10% Premium for 2nd and 3rd Shifts, Excellent Opportunity for Overtime.

Openings currently exist for:

ASSEMBLERS & MACHINE OPERATORS

No experience necessary. Immediate positions are available performing light electrical and mechanical assembly. The above positions are available in the following shifts:

7:00 A.M. - 3:30 P.M. 4:00 P.M. - 12:00 P.M.
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PRODUCTION openings are available on the 2nd and 3rd shift, with on-the-job training. You will learn how to operate fabrication equipment such as rolling mills, slitting machines, punch presses, molding presses, etc. No experience necessary.

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If you are looking for a position which will offer you every opportunity for growth and advancement we urge you to drop by our Employment Office and find out for yourself all the advantages of becoming a Tier. For your convenience our Employment Office is also open from 8:00 A.M. to 7:00 P.M. Monday through Friday and from 9:00 A.M. to 12:00 Noon Saturdays.

The Employment Office will be open Monday, November 11th, from 8 a.m. to 7 p.m.

TEXAS INSTRUMENTS
INCORPORATED
34 Forest Street Attleboro, Mass. 02703

Texas Instruments Terms Clad Metals . . .

Metalworking's $1 Billion Infant



TI's Philip J. Gomez

"And $1 billion covers only clad metal materials systems currently available or on our drawing boards. We know the surface has only been scratched."

REACH INTO YOUR pocket and dig out one of those "sandwich" dimes or quarters currently being minted. You're holding an example of a technology which has grown from specialty applications in jewelry and thermostat metals to a volume business with potential exceeding $1 billion annually: clad metals.

That evaluation comes from Texas Instruments Inc.'s Materials Div., Attleboro, Mass., a front runner among the handful of firms pioneering in this area.

"And $1 billion covers only clad metal materials systems currently available or on our drawing boards," claims Philip J. Gomez, TI vice president and Materials Div. general manager. "The total dollar potential of this market is almost impossible to pin down because we are constantly discovering new applications."

● **Benefits**—Mr. Gomez cites two distinct benefits of clad metals as basis for this rapid growth: improved product performance by combining optimum engineering properties; cost reduction either by conserving costly material (see table) or by simplifying manufacturing operations. TI calls this the application of the "materials system concept."

TI is pursuing application in the transportation, appliance, construction, communication, electric, electronic, military, and government markets. The table accompanying this article gives some idea of the basic combina-

CERTIFIED COPY

The Commonwealth of Massachusetts

Office of the Secretary

State House, Boston 02133

John F. X. Davoren
Secretary of the Commonwealth

June 29, 1970

To Whom it May Concern:

I hereby certify that the records of this office show that M & C Nuclear, Inc. was incorporated under the General Laws of this Commonwealth December 9, 1957 and I further certify that by articles of amendment filed here December 30, 1960 the name of said corporation was changed to Metals & Controls Inc. I also certify that the name of said corporation was changed to Texas Instruments Inc. by articles of amendment the effective date being January 1, 1970. (address given 34 Forest Street, Attleboro, Massachusetts)

I further certify that so far as appears of record here, said corporation still has a legal existence.

IN TESTIMONY of which, I have hereunto affixed the Great Seal of the Commonwealth on the date first above written.

John F. X. Davoren

Secretary of the Commonwealth.

Deputy Secretary.

20

CONCLUSION

Aside from the aforesaid irregular proceedures which helped defendant, Texas Instruments, Inc. circumvent the law in the federal courts of Massachusetts I respectfully request the U.S. Supreme Court to consider the following other offenses.

Among the other offenses my complaint alleges, State Police harassments, which were enforce against me in violation of the Constitution of the United States, the Supreme Law of the Land.

Should anyone — including Texas Instruments, Inc. — be permitted to avoid prosecution for the violation of the "Supreme Law of the Land" by having some lawyer argue around city ordinances or Massachusetts State laws?

At last, but not least, the aforesaid irregularities in the lower court proceedings should be of plenary importance to the entire judiciary system in order to warrant the review of this case by the Supreme Court of the United States.

Respectfully submitted,

Adam Farkas
Pro Se

APPENDIX A

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

ADAM FARKAS

v.

DALLAS MAYOR, ERIK JOHNSON
TEXAS INSTRUMENTS, INC.
LING-TEMCO-VOUGHT, INC.
JOE MORRIS LANDTROOP, USN.

Civil Action
No. 67-369-M

NOTICE

December 31, 1968

Please take notice that the following endorsement has been made on PLAINTIFF'S MOTION FOR EARLY FINAL JUDGMENT UNDER THE UNITED STATES CODE:

MURRAY, D.J. "Having no regard whatsoever to the gratuitous unproved charges appearing on this paper — or on any other paper filed by plaintiff — and leaving to the parties the question whether to move to strike or expunge, the motions of the defendants to dismiss are hereby granted."

By the Court,
(s) ALICE R. FITZGERALD
Deputy Clerk

APPENDIX B

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

ADAM FARKAS,
PLAINTIFF,
v.
TEXAS INSTRUMENTS, INC.
LING-TEMCO-VOUGHT, INC.,
DEFENDANTS.

Civil Action
No. 67-369-M

MEMORANDUM
December 31, 1969

MURRAY, D.J. Plaintiff, a resident of Rhode Island, brings this action against Texas Instruments, Inc. (Instruments), and Ling-Temco-Vought, Inc.,[1] both Delaware corporations alleged to be doing business in Massachusetts, in which he seeks damages. There are no allegations in the complaint of any particular jurisdictional basis for the action, and thus there is no compliance with Fed. R. Civ. P. 8(a) (1). The action was brought against Instruments in this district presumably as "the residence of such corporation for venue purposes". 28 U.S.C. 1391(c). Instruments has moved to quash the service of the summons issued in the case and served upon the Secretary of the Commonwealth (Secretary) pursuant to Fed. R. Civ. P. 4(d)(3). Instruments contends the Secretary was not an "agent authorized by appointment or by law to receive service of process" on its behalf as Rule 4(d)(3) requires. In its motion to dismiss Instruments raises substantially

[1] Ling-Temco-Vought, Inc. also has attacked the complaint in this case, and that attack under its motions will be heard and considered after the decisions on Instruments' motions herein.

the same issue, asserting that (a) Instruments has not appointed the Secretary to receive service of the process, (b) Instruments is not doing and has not done business within the Commonwealth at all material times herein, and (c) the causes of action alleged in the complaint did not arise in or out of business done in the Commonwealth." Instruments also moves to dismiss the action on the ground the complaint fails to state a claim upon which relief can be granted, but this additional ground will not be considered in view of the disposition of the motion on the jurisdictional ground. These motions were heard by the court pursuant to Fed. R. Civ. P. 12(d) on the statements of counsel together with the affidavits of plaintiff and of Bryan F. Smith, senior vice president and secretary of Instruments, and certificates of the Secretary of the Commonwealth. This memorandum contains the findings and rulings of the court.

Instruments was not registered under Mass. Gen. Laws, ch. 181, to do business in the Commonwealth when the process was served on the Secretary. It was last qualified on January 11, 1961 when it filed with the Secretary an affidavit of withdrawal of the right to do business in Massachusetts. It has never registered here since that date, and it has not appointed the Secretary under Mass. Gen. Laws, ch. 181, § 3 its agent to receive service of process against it. Thus service on the Secretary of the summons could not be effective under Rule 4(d)(7) to bring Instruments within the jurisdiction of this court unless plaintiff can show Instruments is doing business in Massachusetts within the meaning of Mass. Gen. Laws, ch. 181, § 3A, or other applicable provisions of law.

It is not clear from the complaint, but it was made clear during oral argument by counsel for plaintiff that the wrongs alleged by plaintiff occurred in Texas, and none of them arose in Massachusetts. This is a significant fact

in testing the efficacy of the service under section 3A.[2] That statute by its express terms applies only "in relation to any cause of action or proceeding arising out of such business". The courts of Massachusetts have considered this to mean limited to business arising within the Commonwealth. *Remington Arms Co. Inc.* v. *Lechmere Tire & Sales Co.*, 339 Mass. 131, 136 (1959). *Trojan Engineering Corp.* v. *Green Mountain Power Corp.*, 293 Mass. 377, 382 (1936). It follows from these cases, and from *Caso* v. *Lafayette Radio Electronics Corporation*, 370 F.2d 707, 711 n. 5 (1st Cir. 1966), that plaintiff's reliance on service of the process under section 3A is unavailing.

But it is argued by plaintiff that Instruments as a foreign corporation is amenable to service of process under the provisions of Mass. Gen. Laws, ch. 223, § 38,[3] the terms of which contain no express limiting factors such as appear in chapter 181, section 3A. Under section 38, service may be made on the Secretary, in the manner provided in section 37, if no officer or agent can be found in the Commonwealth. Without deciding the question, it will be assumed for the purpose of testing the applicability of section 38

---

[2] Mass. Gen. Laws, ch. 181, § 3A, in the aspects pertinent here, provides:

> Any such corporation which does business in this commonwealth without complying with the provisions of section three . . . shall . . . be deemed and held, in relation to any cause of action or proceeding arising out of such business, to have appointed the secretary . . . to be its true and lawful attorney, and any process in any such action or proceeding against it served upon the secretary . . . shall be of the same legal force and validity as if served on such corporation.

[3] Mass. Gen. Laws, ch. 223, § 38 provides, in pertinent part:

> In an action against a foreign corporation . . . engaged in or soliciting business in the commonwealth, permanently or temporarily, service may be made in accordance with [section 37] relative to service on domestic corporations in general, instead of . . . under section three or three A of chapter one hundred eighty-one.

that the manner of the service made here on the Secretary is effective as service authorized by section 38. *See* Fed. R. Civ. P. 4(d)(7). *See also* Mass. Acts of 1962, ch. 750, §§ 55, 56, 57, 58 and 71.

The question posed by plaintiff is the applicability of section 38 in the circumstances of the case. The court of appeals in this circuit in *Caso* v. *Lafayette Radio Electronics Corporation, supra*, pointed out the test it would apply in an action against a foreign corporation having limited business activity in Massachusetts (712):

> [T]he Massachusetts courts would assert jurisdiction over a foreign corporation served under section 38: (a) whenever the corporation's activities affect the commerce of Massachusetts substantially so that the state has an interest in regulating the general conduct of those activities ("doing business"), or (b) whenever the corporation's activities in Massachusetts have so affected the particular transaction at issue that it is appropriate to hear the claim in a Massachusetts court . . . .

It is apparent here from the admitted fact none of the alleged wrongs occurred in Massachusetts, that plaintiff's complaints have not been shown to have even remote contact with any of the corporation's activities within the Commonwealth. (It will later appear this is true also of Instruments' subsidiary.) Thus, the condition stated in "(b)" is absent here. As to condition "(a)", the facts of Instruments' business activities are as follows. Instruments maintains a small office in Waltham as a headquarters for nine salesmen who solicit orders in Massachusetts and the other New England states for electronic devices manufactured by Instruments, none of whom accept any orders taken, and none are authorized to do so. The orders are mailed to Instruments' Dallas, Texas headquarters for acceptance or refusal. Invoices are made in Dallas, and

mailed from there to the customers, and all remittances are sent by customers to Dallas. The six secretaries at Waltham type and file correspondence and other records relating to the orders taken by the salesmen. No shipping of merchandise, no collections and no deliveries are made to or from or handled in Waltham. Except for petty cash not exceeding $300, the automobiles of the salesmen, and the furniture in the office at Waltham, Instruments owns no property in Massachusetts. Instruments' subsidiary, Texas Instruments Supply Company, is a Texas corporation doing business in Canton, Massachusetts, registered to do business here as a foreign corporation, but not authorized to receive service of process for Instruments. Its business is that of industrial distributor, purchasing industrial products from various manufacturers, including Instruments, and selling to customers in Massachusetts and the other New England states. It carries on its own business and does not engage in Instruments' business. There is no showing that plaintiff's complaints had any contact with the business or management policies of Texas Instruments Supply Company. Moreover, there is no showing that the subsidiary *does not* carry out policies and business procedures entirely independent of Instruments, or that Instruments' personnel is associated with the subsidiary. There is no evidence of the dollar volume of sales made by Instruments to its subsidiary, and no evidence of the fractional part of the subsidiary's purchases supplied by Instruments.

The court finds that Texas Instruments Supply Company is not the agent of Instruments and is not the alter ego of Instruments in Massachusetts, that is is not subject to Instruments' control in the State, and has not been shown to make any significant contribution to the business activities of Instruments in the Commonwealth. *See Aro Manufacturing Co.* v. *Automobile Body Research Corp.*, 352 F.2d

400 (1st Cir. 1965), *cert. denied*, 383 U.S. 947 (1966). Taking into consideration the relations shown to exist in Massachusetts between Instruments and its subsidiary, together with all other activities of Instruments in the Commonwealth, the court finds that Instruments' impact on the commerce of the State is certainly no more marked, and apparently a good deal less so, than that of the defendant in *Caso*. Following the teaching of *Caso*, the court finds "no strong federal interest in taking jurisdiction here where it is not clear that [Massachusetts] would . . . ." *Caso* v. *Lafayette Radio Electronics Corporation*, *supra* at 713. The court holds, therefore, there is want of personal, jurisdiction over Instruments by service of process under section 38.

The court does not have personal jurisdiction over Instruments as a foreign corporation on any ground advanced by plaintiff. Nothing has appeared in the proceedings warranting the conclusion that to satisfy notions of fair play it is in the interest of justice to transfer the case against Instruments to another district. 28 U.S.C. § 1406(a). *Goldlawr, Inc.* v. *Heiman*, 369 U.S. 463 (1962); *Concession Consultants, Inc.* v. *Mirisch*, 355 F.2d 369 (2d Cir. 1966); *cf. Meench* v. *Raymond Corp.*, 283 F. Supp. 68 (E.D. Pa. 1968). Accordingly, Instruments' motion to quash the service is hereby allowed, and the case against it is hereby dismissed.

(s) FRANK J. MURRAY
United States District Judge

Dated December 31, 1969

APPENDIX C

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

Civil Action No. 67-369-M

ADAM FARKAS

v.

DALLAS MAYOR ERIK JONSSON,
TEXAS INSTRUMENTS, INC.,
LING-TEMCO-VOUGHT, INC., and
JOE MORRIS LANDTROOP, USN

ORDER

January 20, 1970

MURRAY, J.

This case came on to be heard on plaintiff's motion to amend complaint against Ling-Temco-Vought, and the defendant appeared by counsel and argued, the plaintiff not appearing by himself or by counsel; thereupon, upon consideration thereof, it is hereby

Ordered, that the motion be denied, not for want of prosecution, but in the exercise of the court's discretion, and the action be dismissed.

By the Court,
(s) ROBERT J. SMITH, JR.
Deputy Clerk

(s) FRANK J. MURRAY
United States District Judge

APPENDIX D

United States Court of Appeals
For the First Circuit

No. 7560

ADAM FARKAS,

APPELLANT,

v.

TEXAS INSTRUMENTS, INC.

and

LING-TEMCO-VOUGHT, INC.,

APPELLEES.

APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

Before ALDRICH, *Chief Judge*,
McENTEE and COFFIN, *Circuit Judges*.

Adam Farkas, pro se.
Lane McGovern, with whom *Ropes & Gray* was on brief, for Texas Instruments Inc., appellee.
Harold Lavien, with whom *Brown, Rudnick, Freed & Gesmer* was on brief, for Ling-Temco-Vought, Inc., appellee.

July 10, 1970.

PER CURIAM. Plaintiff brought this damage action against Texas Instruments, Inc. (TI) and Ling-Temco-Vought, Inc. (LTV), both Delaware corporations alleged to be doing business in Massachusetts, for what appears to be wrongful discharge and conspiracy. Plaintiff appeals from orders dismissing the suit against TI for lack of jurisdiction over the person and denying leave to file an amended complaint against LTV.

The action against TI was dismissed on the ground that service of process in accordance with Mass. Gen. Laws Ann. ch. 181, § 3A (Supp., 1970) was ineffective, as TI was not doing business in the Commonwealth. On the assumption that the manner of service made would, in a proper instance, be effective under Mass. Gen. Laws Ann. ch. 223, § 38 (1958), the district court ruled that jurisdiction was nevertheless lacking because TI was not doing business in the state and that the claim in question did not arise out of any activity by TI in Massachusetts. *Cf. Caso* v. *Lafayette Radio Electronics Corp.*, 370 F.2d 707 (1st Cir. 1966). Prior to argument, this court requested the parties to show cause why the judgment below should not be affirmed under Local Rule 5 (now 6) in light of our recent decision in *Seymour* v. *Parke, Davis, Inc.*, 423 F.2d 584 (1st Cir. 1970). The plaintiff responded by contending that TI operates a large plant in Attleboro, Massachusetts, and is therefore doing business in the state. Counsel for TI represented to the court that the Attleboro plant is owned by a TI subsidiary, Texas Instruments, Inc., a Massachusetts corporation, and not by TI, against whom the action was brought. The court thereupon extended leave to the plaintiff to file copies of official documents, from the Secretary of State or otherwise, that would show that Texas Instruments, Inc. (Attleboro) is the same corporation as TI. Plaintiff having failed to do so,[1] the judgment of dismissal is affirmed on the opinion of the district court, *Farkas* v. *Texas Instruments, Inc.*, C.A. No. 67-369-M (D. Mass., filed Dec. 31, 1969), and *Seymour* v. *Parke, Davis, Inc.*, *supra*.

---

[1] Plaintiff filed copies of newspaper advertisements and other material purporting to show that TI is doing business in Massachusetts. None of it is responsive to the issue whether TI and Texas Instruments, Inc. (Attleboro) are one and the same. In view of plaintiff's lack of counsel, the court subsequently requested TI to file proof that Texas Instruments, Inc. (Attleboro) is a Massachusetts corporation. A certificate of the Secretary of State attesting to that fact has been filed with the court.

In the action against LTV, it is helpful to review the history of the litigation in considering the propriety of the district court's denial of plaintiff's motion of February 18, 1969, for leave to file an amended complaint. The original complaint was filed on May 5, 1967. LTV moved to strike the complaint under Fed. R. Civ. P. 12(f) and, as the original complaint was an extreme example of poor pleading, the district court struck it *in toto*, as to LTV, on September 11, 1967. Plaintiff moved for leave to amend on September 21 and, although the proposed amended complaint was hardly a model of fine draftsmanship, it did allege a conspiracy between LTV and TI to falsify plaintiff's medical records and thereby to prevent his securing employment. The motion was denied on November 9. Another motion for leave to amend was filed on November 22, the proposed complaint again setting forth, amidst a mass of irrelevant material, a claim that LTV and TI conspired as recited above. Leave was denied on June 25, 1968. Having been unsuccessful in bringing a complaint before the district court, plaintiff on June 28, 1968, filed a motion for "early judgment" in an apparent attempt to lay a foundation for an appeal. The motion was renewed on September 18, September 23, and November 5. On December 31, 1968, the district court granted LTV's motion to dismiss the action, but on January 2, 1969, vacated the judgment and denied the motion to dismiss. On February 4, 1969, plaintiff finally secured counsel and on February 18 another motion for leave to amend was filed. The proposed complaint, this time in proper form, alleged, inter alia, that LTV and TI conspired to prevent plaintiff from obtaining gainful employment. Leave to file the proposed complaint was denied and the action dismissed, both without opinion, on January 20, 1970. Plaintiff moved for rehearing, but subsequently withdrew his motion.

Although amendment of pleadings is largely a matter

within the discretion of the district court, Rule 15(a) provides that "leave shall be freely given when justice so requires." And, as the Supreme Court has stated, leave should be granted:

> "[i]n the absence of any apparent or declared reason — such as undue delay, bad faith or dilatory motive on the part of the movant, repeated failure to cure deficiencies by amendments previously allowed, undue prejudice to the opposing party by virtue of allowance of the amendment, [or] futility of amendment . . . ." *Foman* v. *Davis*, 371 U.S. 178, 182 (1962).

Regrettably, the district court did not give its reasons for denying leave to amend and we must therefore canvas the possible bases for doing so.[2] It is clear, however, that there was no showing or claim of prejudice by LTV at any point in these proceedings. Nor is there any claim of bad faith on the part of the plaintiff. In the absence of some finding on these points by the district court, we cannot ascribe its decision to them.

The delay involved here is insufficient reason for the denial of plaintiff's most recent motion. In the absence of prejudice or bad faith, a delay of this magnitude does not of itself support denial. *Middle Atlantic Utilities Co.* v. *S.M.W. Development Corp.*, 392 F.2d 380, 384 (2d Cir. 1968). Moreover, most of the delay is attributable not to plaintiff, but to the time spent by the court in considering pending motions in the case. Plaintiff's motion to amend on September 21, 1967, followed the striking of the complaint by only ten days, but was held under advisement until November 9. His motion of November 22 was prompt, but the court held it for seven months. Plaintiff then un-

---

[2] The district court did expressly state that the denial was not based on want of prosecution. Accordingly, the denial cannot be affirmed on a default theory premised on plaintiff's failure to appear at a hearing on the motion.

successfully sought the entry of a final judgment from June 28, 1968, until early 1969. Finally, the motion to amend here at issue was held by the court for eleven months without decision. Under these circumstances we cannot permit denial of leave to amend to be premised upon the delay between the commencement of the action and the date on which the denial was entered.

Coming to the effect of the previous attempts to amend, we note that the proposed amended complaints submitted on September 21, and November 22, 1967, were at least arguably unsuccessful in their efforts to eliminate the rambling and immaterial allegations which the court apparently found objectionable in the original complaint. In the ordinary case, we would be inclined to uphold a trial court's exercise of discretion in denying leave to amend in like circumstances. Here, however, we are faced with a special circumstance in that the plaintiff, until the filing of the proposed complaint here at issue, was proceeding *pro se*. And while the standard which must be met in the drafting of pleadings is no different in such a case, the fact does bear on the propriety of the denial of leave to file an amended complaint, which was drafted by competent counsel and fully complies with Fed. R. Civ. P. 8, in light of the language of Rule 15(a) and *Foman*. In such circumstances, and absent bad faith or prejudice, we think the plaintiff should not be deprived of his day in court on the merits by virtue of having previously sought to file amendments *pro se* which did not meet proper standards of draftsmanship. The district court therefore erred in denying plaintiff's motion of February 18, 1969, for leave to file an amended complaint.

The judgment in favor of Texas Instruments, Inc., is affirmed. The judgment in favor of Ling-Temco-Vought, Inc., is reversed and the case remanded for proceedings consistent with this opinion.

APPENDIX E

STATUTES AND CONSTITUTIONAL PROVISIONS

28 U.S.C.A. § 1331. *Federal question; amount in controversy; costs*

(a) The district courts shall have original jurisdiction of all civil actions wherein the matter in controversy exceeds the sum of value of $10,000, exclusive of interest and costs, and arises under the Constitution, laws, or treaties of the United States.

* * *

§ 1391. *Venue generally*

(a) A civil action wherein jurisdiction is founded only on diversity of citizenship may, except as otherwise provided by law, be brought only in the judicial district where all plaintiffs or all defendants reside.

(b) A civil action wherein jurisdiction is not founded solely on diversity of citizenship may be brought only in the judicial district where all defendants reside, except as otherwise provided by law.

(c) A corporation may be sued in any judicial district in which it is incorporated or licensed to do business or is doing business, and such judicial district shall be regarded as the residence of such corporation for venue purposes.

(d) An alien may be sued in any district. June 25, 1948, c. 646, 62 Stat. 935.

§ 1983. *Civil action for deprivation of rights*

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution

and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress.

R.S. § 1979.

42 U.S.C.A. § 1985. *Conspiracy to interfere with civil rights — preventing officer from performing duties*

* * *

DEPRIVING PERSONS OF RIGHTS OR PRIVILEGES

(3) If two or more persons in any State or Territory conspire or go in disguise on the highway or on the premises of another, for the purpose of depriving, either directly or indirectly, any person or class of persons of the equal protection of the laws, or of equal privileges and immunities under the laws; or for the purpose of preventing or hindering the constituted authorities of any State or Territory from giving or securing to all persons within such State or Territory the equal protection of the laws; or if two or more persons conspire to prevent by force, intimidation, or threat, any citizen who is lawfully entitled to vote, from giving his support or advocacy in a legal manner, toward or in favor of the election of any lawfully qualified person as an elector for President or Vice President, or as a Member of Congress of the United States; or to injure any citizen in person or property on account of such support or advocacy; in any case of conspiracy set forth in this section, if one or more persons engaged therein do, or cause to be done, any act in furtherance of the object of such conspiracy, whereby another is injured in his person or property, or deprived of having and exercising any right or privilege of a citizen of the United States, the party so injured or deprived may have an action for the recovery of damages, occasioned

by such injury or deprivation, against any one or more of the conspirators. R.S. § 1980.

* * *

CONSTITUTIONAL PROVISIONS

* * *

Amendment 14

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

MASSACHUSETTS GENERAL LAWS, CHAPTER 223

§ 38. *Foreign corporations*

In an action against a foreign corporation, except an insurance company, which has a usual place of business in the commonwealth, or, with or without such usual place of business, is engaged in or soliciting business in the commonwealth, permanently or temporarily, service may be made in accordance with the provisions of the preceding section relative to service on domestic corporations in general, instead of upon the commissioner of corporations and taxation under section three or section three A of chapter one hundred and eighty-one. As amended St. 1939, c. 452, § 61.

APPENDIX F

EXHIBIT H

AFFIDAVIT

STATE OF TEXAS

COUNTY OF DALLAS, ss.

I, Bryan F. Smith, being first duly sworn, depose and say as follows:

1. I am a Senior Vice President and Secretary of the defendant Texas Instruments Incorporated and am familiar with its various business activities in the United States. I am the same Bryan F. Smith whose affidavits dated August 21, 1967 and December 23, 1968 are on file with the papers of this case.

2. The statements set forth in my two prior affidavits are correct, except that there are now in the Waltham Sales Office nine rather than six solicitors, six rather than four secretaries and the office maintains a petty cash checking account of up to $300.00.

3. I have read the plaintiff's amended complaint, referred to in the Court's Order of June 9, 1969, and am generally familiar with the claims which the plaintiff, Adam Farkas, has made against Texas Instruments Incorporated in recent years. The claims alleged in the plaintiff's amended complaint relate to business which was done by Texas Instruments Incorporated and events which took place only in the State of Texas.

(s) BRYAN F. SMITH

BRYAN F. SMITH,

Senior Vice President and Secretary

Texas Instruments Incorporated

Subscribed and sworn to before me this 9th day of September, 1969.

(s) CLARA C. O'DONNELL

Notary Public

My Commission expires June 1, 1971

Filed in open court 9/18/69 — *RJS*

APPENDIX G

[Letterhead — OFFICE OF THE CLERK
UNITED STATES COURT OF APPEALS
FOR THE FIRST CIRCUIT]

May 20, 1970

To Mr. Farkas and Mr. McGovern:

No. 7560. Farkas v. *Texas Instruments, Inc., et al.*

Dear Sirs:

The court has requested me to call your attention to its recent decision *Seymour* v. *Parke, Davis, Inc.*, a copy of which is enclosed.

In the light of that case the court proposes to affirm the judgment below as to Texas Instruments, Inc. under Local Rule 5 at the call on Tuesday, June 2nd unless appellant shall show in writing at or before that time why it should not do so.

Sincerely yours,
(s) DANA H. GALLUP
Clerk.

DHG:gvc
Enclosure

MR. ADAM FARKAS
83 State Street
Bristol, Rhode Island 02809
LANE McGOVERN, Esquire
225 Franklin Street
Boston, Massachusetts 02110
courtesy cc: HAROLD LAVIEN, Esquire
85 Devonshire Street
Boston, Massachusetts 02109



Helicopter rotors—what Whittaker calls a "materials system"—are finished for Vietnam-bound whirlybirds.

puting until 1964, although Whittaker remained the principal shareholder and stayed at the helm. (Now chairman of the board, Whittaker pulled out of day-to-day management after persuading Duke to take the presidency in 1964.)

The company got into materials with the acquisition of Monrovia Aviation Corp., a maker of metal "sandwiches" for aircraft subassemblies, and Narmco Industries, a company specializing in structural adhesives and plastics. There was no chance to build on this base until 1965, when Duke installed tighter business controls, doubled and decentralized the marketing effort, and cut out some of the company's marginal product lines.

Within and without. About half of Whittaker's growth to sales of $84-million in 1966 was internal. "You couldn't stand in the way of that great thrust in aerospace spending, and not grow," says Duke. This year's growth to around $200-million has been 35% internal. The rest has come from acquisitions, and Duke seems disinclined to slow his pace in this direction.

At last count, 20 acquisitions have been made or announced this year. Recent deals have shown a trend to bigger game—Shakespeare Co., for example, had sales of $33.6-million last fiscal year.

"In order to have the necessary muscle to do a real materials system job in the several fields we've picked," Duke says, "we'd have to be between $800-million and $1-billion in sales. We aspire to reach that level by 1972." **End**



If you really want to make some money, move to Massachusetts.

Texas Instruments did.

And made (among other things) the copper and nickel sandwich that is minted into quarters and dimes. Added 110,000 square feet of manufacturing space in Massachusetts in 1966. Increased employment here by 50% in the past four years.

Why Massachusetts? Maybe it's the co-operative work force—unmatched among industrial states for its varied skills and adaptability.

Or the schools, research complexes, transportation network.

If Texas Instruments — like thousands of other companies — found a good deal here, you could too. Phone (617) 727-3208, or write Massachusetts Dept. of Commerce & Development, 100 Cambridge Street, Boston, Mass. 02202, Dept. B-2.